IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9712 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MADRESSA-E- TAALIMUL ISLAM KARMAD

Versus

DISTRICT COLLECTOR

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Appearance:

MR TUSHAR MEHTA for Petitioner

MS PAURAMI B SHETH for Respondent No. 2

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 26/04/2001

ORAL JUDGEMENT

Rule.

Ms. Sheth appears and waives service of rule on behalf of respondent no. 1. Mr. Poojari waives service

of rule on behalf of respondent no. 2. In the facts and circumstance of the case, this case is taken up for final hearing by consent of parties.

F A C T S

1. The petitioner-Trust purchased land from Revenue Authorities in a public auction in 1980 being the highest bidder. The said land was allotted by District Collector, Bharuch somewhere in 1997. The petitionerTrust after getting the plan approved started construction over the land in question. It was found while digging the land that the Municipalities water line was passing underground from the land. The petitioner therefore, approached respondent no. 2 seeking guidance. The respondent no. 2 in turn directed the petitioner not to make any further constructions. Some negotiation went on between the respondent and the Municipality for making some adjustment in the water line. Ultimately, the petitioner has approached this Court with this petition seeking following reliefs.

(a) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction may kindly be granted quashing and setting aside the order dated 28th September, 1998 (Annexure A) and restraining the respondents, their officers, agents and servants from causing any interference, hurdle and hindrance if the petitioner constructs in accordance with the permission granted by the respondent no. 2 Municipality vide its order dated 18th January, 1997 (Annexure - E).

(b) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction may kindly be granted directing the respondent no. 1 herein to require the respondent no. 2 to shift the pipelines from the land belonging to the petitioner to any other suitable land forthwith.

(c) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction may kindly be granted restraining the respondents, their officers, agents and servants from taking any steps whatsoever for acquiring the land belonging to the petitioner Trust which is the subject matter of this petition.

(d) Pending admission, hearing and final disposal of this petition, an interim injunction may kindly be

granted staying further operation, execution and implementation of the order dated 28th September 1998 (Annexure A) and restraining the respondents, their officers, agents and servants from causing any interference, if the petitioner puts up the construction strictly in accordance with permission granted by the respondent no. 2 Municipality by an order dated 18th January 1997 (Annexure - E) and restraining the respondents, their officers, agents and servants from taking any steps to acquire the land belonging to the petitioner Trust.

(e) Pass such other and further orders as may deem fit in the interest of justice.

2. This Court passed an order on July 12, 1999 for exploring the possibility of working out the line of action whereby the portion of 21 inches water line lying below the ground of the petitioner can be adequately protected against the future pressure and/or damage from the construction proposed by the petitioner. Following that this Court is informed that trustees of the petitioner-Trust and officials of the municipality respondent no. 2 visited the place and have discussed the line of action. Accordingly, an affidavit is also filed by the Managing Trustees of the petitioner-Trust by Patel Usuf Adam.

3. Having heard learned Advocates Mr. Mehta and Ms. Sheth, and learned Assistant Government Pleader, it appears that, shifting of water pipe line may not be a viable solution. It would also not be in the interest of justice to uphold the order of the municipality prohibiting construction of the land by the petitioner. At the same time, the water pipe line lying beneath the land has also to be protected. Keeping all these aspects in mind, the following direction are given.

4. The petitioner will be permitted to make the construction after he obtains fresh approval from respondent no. 2. The petitioner will, if need be, make necessary changes in the plan and location of the construction proposed to be made on the land in a manner that the 21 inches water pipe line lying below the ground will not be damaged by the construction and will remain accessible for repairs and/or maintenance in future. The petitioner will permit the structural engineer and/or other qualified officers of respondent no. 2 to supervise the construction that the petitioner proposes to make, and to ensure that the above condition is satisfied. Respondent no. 2 will not object to the

construction, if this requirements are met and the construction proposed is otherwise legal.

5. The petition stands disposed of with above directions. Rule made absolute. No orders as to costs.

(A.L. DAVE,J.)

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